

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RANDALL S. HART and TENNESSEE VALLEY AUTHORITY,
New Johnsville, TN

*Docket No. 01-1963; Submitted on the Record;
Issued April 3, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he has greater than a nine percent permanent binaural hearing loss, for which he received a schedule award.

Appellant, a 49-year-old welder, filed a claim for benefits on January 9, 2001, claiming that he sustained a hearing loss caused by factors of his employment, and that he became aware that this injury was causally related to his employment on January 5, 2001.

On March 14, 2001 the Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. James O. Fordice, a Board-certified specialist in otolaryngology, for an audiologic and otologic evaluation of appellant.

In a report dated April 2, 2001, Dr. Fordice noted findings on audiological evaluation based on an April 2, 2001 audiogram. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 10, 10, 35 and 65 decibels; left ear -- 15, 10, 45 and 80 decibels. Based on these findings, the Office medical adviser concluded that appellant had a hearing loss of 7.5 percent in his right ear and a 18.75 percent loss in his left ear, which amounted to a 9 percent binaural hearing loss.

On July 10, 2001 the Office granted appellant a schedule award for a nine percent permanent binaural hearing loss for the period April 2 to August 5, 2001, for a total of 18 weeks of compensation.

The Board finds that appellant has not established that he has greater than a nine percent permanent binaural hearing loss, for which he received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act¹ and its implementing regulation² set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.³

Under the A.M.A., *Guides*, hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deduced since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.⁴ Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.⁵

In this case, the case was referred to an Office medical adviser to apply the Office's standardized procedures to the April 2, 2001 audiogram performed for Dr. Fordice. According to the Office's standardized procedures, testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed hearing losses of 10, 10, 35 and 65 respectively. These decibels, totaled to 120 and divided by 4, obtained an average hearing loss at those cycles of 30 decibels. The average of 30 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 5 decibels, which when multiplied by the established factor of 1.5 computes a 7.5 percent hearing loss in the right ear. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 15, 10, 45 and 80 respectively. These decibels amounted to 150, which, when divided by 4, obtains an average hearing loss at those cycles of 37.50 decibels. The average of 37.50 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 12.50, which when multiplied by the established factor of 1.5 amounts to a 18.75 percent hearing loss in the left ear. The Office medical adviser then multiplied the lesser loss of 7.5 percent in the right ear by 5, added this figure to the greater loss of 18.75 and divided the total by 6 to arrive at a 9 percent binaural hearing loss.

The Board notes that the Office medical adviser properly used the applicable standards of the A.M.A., *Guides* to determine that appellant has a nine percent total binaural hearing loss

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404 (1999).

³ *Id.*

⁴ A.M.A., *Guides*, page 250 (5th ed. 2001).

⁵ *Id.*

causally related to his federal employment. The Board therefore affirms the July 10, 2001 Office decision finding that appellant is entitled to a schedule award of no greater than a nine percent permanent binaural hearing loss.

The July 10, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 3, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member